

APPENDIX.

AFFIDAVIT OF PETITIONER IN SUPPORT OF PETITION.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

I, S. DUKE, being duly sworn on oath depose and say: that I am of legal age and a resident of the City of Chicago, County of Cook and State of Illinois; that I am the S. Duke, doing business under the name and style of Roosevelt Chair & Supply Company, 1220 South Michigan Avenue, Chicago, Illinois, the petitioner named in the above identified matter; that until enjoined from so doing by the United States District Court for the Northern District of Illinois, Eastern Division, at Chicago, on or about February 1, 1943, in the matter in which I was defendant and Herbert A. Everest and Harry C. Jennings were plaintiffs, Civil Action No. 4045, I was engaged in the manufacture, sale and renting of folding wheel chairs of the character involved in this litigation and as exemplified by Plaintiffs' Exhibit No. 1 and Defendant's Exhibit B; that the only other manufacturer of folding wheel chairs of the character involved in this litigation, in the United States, or elsewhere, insofar as I am aware, is the partnership, Everest and Jennings, (consisting of Herbert A. Everest and Harry C. Jennings) the plaintiffs in this case; that in my opinion, and based upon my knowledge of and experience in the business of manufacturing, selling and renting such folding wheel chairs, there is no likelihood, or even any possibility, of any further, additional or other suit by the plaintiffs upon either of the patents Nos. 2,095,411 and 2,181,420, here involved, against any other manufacturer of folding wheel chairs, since there is no other manufacturer against whom such an action could be brought; that unless this Court grants the petition for a writ of certiorari herein sought, there will undoubtedly

never be an opportunity for review of the aforesaid plaintiffs' two patents, here involved, by another Court; that folding wheel chairs, of the character exemplified by Plaintiffs' Exhibit No. 1 and Defendant's Exhibit B, and as to which I have been enjoined, are now in great demand, and in the future will be in increasingly greater demand, for private purchase and use by and for wounded and otherwise invalided members of the armed forces of the United States in and for use in government hospitals, and like places; and that unless this Court grants the petition for a writ of certiorari herein prayed for, and corrects the errors deemed to be present in the decisions of the lower courts upholding the two patents here involved as valid and infringing the plaintiffs will have an unwarranted monopoly, (never intended to be granted by the patent laws), upon the manufacture and sale of folding wheel chairs of the character involved in this litigation during the remaining life of said patents (approximately ten (10) years in the case of patent No. 2,095,411, and twelve (12) years in the case of patent No. 2,181,420), and one result thereof will be that the wounded and otherwise invalided members of the forces of the United States, and their relatives and friends, will be required to pay excessively and unnecessarily high prices for such folding wheel chairs due to the presence of such a monopoly in the plaintiffs and the absence of competition in the manufacture and sale of such folding wheel chairs.

Further affiant sayeth not.

(Signed) SAM DUKE.

Subscribed and sworn to before me this 12th day of January, A. D. 1944.

(Signed) ROSE E. POLZIN,
Notary Public, Cook County,
Illinois.

(SEAL)

